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Calendar No. 371

103D CONGRESS
2D SESSION

S. 1833

To amend the Public Health Service Act to provide for the establishment of a voluntary long-term care insurance program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 25), 1994

Mr. KENNEDY (for himself and Mr. WOFFORD) introduced the following bill; which was read the first time

FEBRUARY 22, 1994

Read the second time and placed on the calendar

A BILL

To amend the Public Health Service Act to provide for the establishment of a voluntary long-term care insurance program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Life Care Act".

SEC. 2. LIFE CARE: PUBLIC INSURANCE PROGRAM FOR NURSING HOME CARE.

(a) IN GENERAL.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) by redesignating title XXVII (42 U.S.C. 300cc et seq.) as title XXVIII; and

(2) by inserting after title XXVI the following new title:

"TITLE XXVII—LIFE CARE: PUBLIC INSURANCE PROGRAM FOR NURSING HOME CARE

"SEC. 2701. ESTABLISHMENT OF VOLUNTARY LONG-TERM CARE INSURANCE PROGRAM.

"The Secretary shall establish a voluntary insurance program for individuals 45 years of age and over to cover the nursing home stays of such individuals.

"SEC. 2702. BENEFITS.

"(a) IN GENERAL.—Subject to subsection (c), an individual who meets the eligibility criteria prescribed in section 2703 shall be eligible under the program established under this title for coverage for necessary services described in subsection (b) (in the amounts described in subsection (c)) that are provided to the individual by a nursing facility while the individual is an inpatient of the facility.

"(b) TYPES.—Coverage may be provided under this title for—

"(1) nursing care provided by or under the supervision of a registered professional nurse;

"(2) physical, occupational, or speech therapy furnished by a facility or by others under arrangements with a facility;

"(3) medical social services;

"(4) drug, biological, supply, appliance, and equipment for use in the facility, that is ordinarily furnished by the facility for the care and treatment of an inpatient;

"(5) medical service of an intern or resident-in-training under an approved teaching program of a hospital with which a facility has in effect a transfer agreement or other diagnostic or therapeutic service provided by a hospital with which a facility has in effect a transfer agreement; and

"(6) such other health services necessary to the health of a patient as are generally provided by a nursing home facility.

"(c) COVERAGE AMOUNT.—

"(1) IN GENERAL.—The amount of coverage provided with respect to an eligible individual for the services described in subsection (b) shall, based on

an election made by the individual, not exceed $30,000, $60,000, or $90,000 over the lifetime of the eligible individual. Such amounts shall be adjusted by the Secretary to reflect increases in the Consumer Price Index.

"(2) ASSET PROTECTION.—An eligible individual shall be entitled to the asset protection provided under section 2708.

"(d) PAYMENT.—Amounts provided under this title with respect to an eligible individual for the services described in subsection (b) shall be paid from the general fund of the Treasury of the United States.

"SEC. 2703. ELIGIBILITY.

"(a) IN GENERAL.—An individual shall be eligible for benefits under this title if—

"(1) the individual—

"(A) is a legal resident of the United States and has elected coverage under subsection (c);

"(B) has been determined by a Screening Agency through a screening process (conducted in accordance with section 2707)—

"(i)(I) to require hands-on or standby assistance, supervision, or cueing (as de-

fined in regulations) to perform three or more activities of daily living;

"(II) to require hands-on or standby assistance, supervision, or cueing with at least such instrumental activity (or activities) of daily living related to cognitive or mental impairment as the Secretary specifies; or

"(III) to display symptoms of one or more serious behavioral problems (that is on a list of such problems specified by the Secretary) which create a need for supervision to prevent harm to self or others; and

"(ii) to require such assistance, supervision, or cueing over a period of at least 100 days; and

"(C) has achieved a score, on a standard mental status protocol (or protocols) appropriate for measuring the individual's particular condition specified by the Secretary, that indicates either severe cognitive impairment or severe mental impairment, or both.

"(2)(A) the individual has filed an application for such benefits, and is in need of, benefits covered under this title;

"(B) the legal guardian of the individual has filed an application on behalf of an individual who is in need of benefits covered under this title; or

"(C) the representative of an individual who is cognitively impaired and who is in need of benefits covered under this title has filed an application on behalf of the individual; and

"(3) receiving nursing home services in a nursing facility would be in the best interest of the individual.

"(b) CURRENT INDIVIDUALS.—An individual who is in a hospital or nursing home on the date of the enrollment of the individual in the program established under this title shall be ineligible for coverage under this section until the individual's first spell of illness beginning after such date.

"(c) ELECTION OF COVERAGE.—

"(1) IN GENERAL.—Subject to this subsection, an individual shall have the option to purchase coverage under this title when the individual is 35 years of age, 45 years of age, 55 years of age, or 65 years of age.

"(2) INITIAL YEAR.—During the 1-year period beginning on the date of enactment of this title, an individual who is 45 years of age or older shall be eligible to purchase insurance under this title, except that such an individual shall not be eligible to purchase such insurance—

"(A) while confined to a hospital or nursing home;

"(B) within the 6-month period after the individuals confinement in a nursing home; or

"(C) within the 90-day period after the individuals confinement in a hospital.

Individuals described in the matter preceding subparagraph (A) shall become eligible to receive benefits under this title on the expiration of the 3-year period beginning on the date such individuals purchase insurance under this title.

"(3) EXTENSION BEYOND INITIAL YEAR.—If an individual is confined to a nursing home or hospital during a period that extends beyond the first year after the effective date of this title, an individual shall be eligible to enroll in the program established by this title during the 60-day period beginning after the individual's spell of illness.

"(4) SUBSEQUENT YEARS.—During years subsequent to the 1-year period referred to in paragraph (2), an individual shall be eligible to purchase insurance under this title within 6 months of the 45th, 55th or 65th birthday of the individual.

"(5) ACTIVATION OF BENEFITS.—To receive coverage under the insurance program established by this title, an individual shall have purchased such coverage not later than 1 month prior to admission to a nursing facility, unless the reason for the need of services is a result of an accident or stroke subsequent to the date that such individual enrolled for coverage under this title.

"SEC. 2704. PREMIUM RATES.

"(a) IN GENERAL.—The Secretary shall determine one premium rate for individuals electing to purchase coverage under this title at age 45 (or between the ages of 45 and 54 during the initial enrollment period), a separate rate for those individuals who elect such coverage at age 55 (or between that ages of 55 and 64 during the initial enrollment period), and a separate rate for those individuals who elect such coverage at age 65 (or at age 65 and over during the initial enrollment period).

"(b) REVISION.—The Secretary shall revise premium rates annually to increase such rates to reflect the amount

of the increase in the cost of living adjustment with respect to benefits under title II of the Social Security Act.

"(c) RATES.—In developing premium rates under the program established under this title, the Secretary shall establish rates that are expected to cover 100 percent of the estimated costs of nursing home stays for those individuals enrolled in the program.

"(d) WAIVER.—An individual electing to purchase coverage under this title shall not be required to pay premiums during any period in which such individual is receiving benefits under this title.

"(e) PAYMENT.—Premiums shall be paid under this section into the general fund of the Treasury of the United States.

"SEC. 2705. QUALIFIED SERVICE PROVIDERS.

"(a) IN GENERAL.—To be considered as a covered nursing home service under this title, such service must have been provided by a qualified service provider.

"(b) TYPES.—A provider shall be considered a qualified service provider under this title if the provider is a nursing facility that is certified by the State and meets the requirements of this title and any other standards established by the Secretary by regulation for the safe and efficient provision of services covered under this title.

"SEC. 2706. REIMBURSEMENT.

"(a) AMOUNT.—Monthly reimbursement for nursing facility services under this title shall equal 65 percent of the amount the Secretary determines to be reasonable and appropriate to cover the cost of care provided under this title, taking into account the average cost of providing appropriate care in the most efficient manner.

"(b) PROSPECTIVE PAYMENT.—To the extent feasible, the Secretary shall establish a prospective payment mechanism for payment for nursing home services under this title that takes into account the expected resource utilization of individual patients based on their degree of disability and other factors determining service requirements.

"(c) ROOM AND BOARD PAYMENT.—An individual receiving benefits under this program shall be responsible for the payment of an amount for room and board that is equal to—

"(1) with respect to the initial 6 months of confinement to a nursing facility, 20 percent of the average per diem rate paid by the Secretary to nursing facilities receiving reimbursement under this title; and

"(2) with respect to subsequent periods of confinement, 35 percent of the average per diem rate paid by the Secretary to nursing facilities receiving reimbursement under this title.

"(d) PRIORITY PAYERS.—Notwithstanding any other provision of this title, reimbursement for nursing facility services provided under this title to an individual shall, to the extent available, be made under the Medicare program, under Department of Veterans Affairs' programs, or under private insurance policies prior to reimbursement under this title.

"SEC. 2707. LONG-TERM CARE SCREENING AGENCY.

"(a) ESTABLISHMENT.—The Secretary shall contract with entities to act as Long-Term Care Screening Agencies (hereafter referred to in this title as the 'Screening Agency') for each designated area of a State. It shall be the responsibility of such agency to assess the eligibility of individuals residing in the geographic jurisdiction of the Agency, for services provided under this title according to the requirements of this title and regulations prescribed by the Secretary. In entering into such contracts, the Secretary shall give preference to State governmental entities.

"(b) ELIGIBILITY.—The Screening Agency shall determine the eligibility of an individual under this title based on the results of a preliminary telephone interview or written questionnaire (completed by the applicant, by the caregiver of the applicant, or by the legal guardian or representative of the applicant) that shall be validated through the use of a screening tool administered in person

to each applicant determined eligible through initial telephone or written questionnaire interviews not later than 15 days from the date on which such individual initially applied for services under this title.

"(c) QUESTIONNAIRES AND SCREENING TOOLS.—

"(1) IN GENERAL.—The Secretary shall establish a telephone or written questionnaire and a screening tool to be used by the Screening Agency to determine the eligibility of an individual for services under this title consistent with requirements of this title and the standards established by the Secretary by regulation.

"(2) QUESTIONNAIRES.—The questionnaire shall include questions about the functional impairment, mental status, and living arrangement of an individual and other criteria that the Secretary shall prescribe by regulation.

"(3) SCREENING TOOLS.—The screening tool should measure functional impairment caused by physical or cognitive conditions as well as information concerning cognition disability, behavioral problems (such as wandering or abusive and aggressive behavior), the living arrangement of an individual, availability of caregivers, and any other criteria that

the Secretary shall prescribe by regulation. The screening tool shall be administered in person.

"(d) NOTIFICATION.—Not later than 15 days after the date on which an individual initially applied for services under this title (by telephone or written questionnaire), the Screening Agency shall notify such individual that such individual is not eligible for benefits, or that such individuals must schedule an in-person screening to determine final eligibility for benefits under this title. The Screening Agency shall notify such individual of its final decision not later than 2 working days after the in-person screening.

"(e) IN-PERSON SCREENING.—An individual (or the legal guardian or representative of such individual) whose application for benefits under this title is denied on the basis of information provided through a telephone or written questionnaire, shall be notified of such individual's right to an in-person screening by a nurse or appropriate health care professionals.

"(f) APPEALS.—The Secretary shall establish a mechanism for hearings and appeals in cases in which individuals contest the eligibility findings of the Screening Agency.

"SEC. 2708. RELATION TO TITLE XIX OF THE SOCIAL SECURITY ACT; ASSET PROTECTION.

"Notwithstanding any other provision of law, the assets an eligible individual may retain and continue to be determined eligible for nursing facility benefits under State Medicaid programs (in accordance with section 1902(a)(10)) shall be increased by the amount of coverage ($30,000, $60,000, or $90,000) elected under section 2702.

"SEC. 2709. RELATION TO PRIVATE INSURANCE.

"(a) IN GENERAL.—Except as provided in subsection (b), an insurer may not offer a health insurance policy to an individual covered under this title if the coverage under such policy duplicates the coverage provided under this title.

"(b) DEVELOPMENT OF STANDARD PACKAGES.—The Secretary shall develop standard health insurance benefits packages that insurers may offer to individuals receiving benefits under this title. Such packages shall provide coverage for benefits that compliment, but do not duplicate, those covered under this title.

"SEC. 2710. DEFINITIONS.

"As used in this title:

"(1) ACTIVITY OF DAILY LIVING.—The term 'activity of daily living' includes:

"(A) BATHING.—Getting water and cleansing the whole body, including turning on the water for a bath, shower, or sponge bath, getting to, in, and out of a tub or shower, and washing and drying oneself;

"(B) DRESSING.—Getting clothes from closets and drawers and then getting dressed, including putting on braces or other devices and fastening buttons, zippers, snaps, or other closures, selecting appropriate attire, and dressing in the proper order;

"(C) TOILETING.—Going to a bathroom for bowel and bladder function, transferring on and off the toilet, cleaning after elimination, and arranging clothes;

"(D) TRANSFERRING.—Moving in and out of bed and in and out of a chair or wheelchair; or

"(E) EATING.—Transferring food from a plate or its equivalent into the body, including cutting food so as to make possible safe ingestion.

"(2) NURSING FACILITY.—The term 'nursing facility' means—

"(A) a skilled nursing facility (as defined in section 1819(a) of the Social Security Act); or

"(B) a facility that is a nursing facility (as defined in section 1919(a) of such Act) which meets the requirements of section 1819(b)(4)(C) of such Act (relating to nursing care).

"(3) SPELL OF ILLNESS.—The term 'spell of illness' means a period of consecutive days beginning with the first day on which an individual is furnished services as an inpatient in a hospital or nursing facility and ending with the close of the first 6 consecutive months thereafter during which the individual is no longer an inpatient of a nursing facility, or 90 days after the individual is no longer an inpatient in a hospital.".

(b) CONFORMING AMENDMENTS.—

(1) Sections 2701 through 2714 of the Public Health Service Act (42 U.S.C. 300cc through 300cc–15) are redesignated as sections 2801 through 2814, respectively.

(2) Sections 465(f) and 497 of such Act (42 U.S.C. 286(f) and 289(f)) are amended by striking

out "2701" each place that such appears and inserting in lieu thereof "2801".

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